IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. CIVIL SPECIAL APPEAL NO.1033/1996

Mrs. Renu Joshi
Vs.
Shri Ajeet Kumar Sharma & Ors.

Date of Judgment :: 01 February, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri S.N. Kumawat for the appellant.
Shri B.L. Awasthi, Addl. G.A. for the State.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

This special appeal is directed against the order of the learned Single Judge dated 11.9.1996 in S.B. Civil Writ Petition no.6825/1993 quashing the selection of the appellant, and thus allowing the writ petition of respondent no.1, Ajeet Kumar Sharma.

The dispute relates to the post of Assistant Professor (Clinical Psychology) in the Social Welfare Department of the Government of Rajasthan. An advertisement was issued on 16.7.1993 inviting application for temporary appointment on the post. The viva voce was conducted by Four Member Board on 22.9.1993. The appellant was selected for appointment

and appointment order was issued on 17.11.1993. The respondent was kept in the reserve list. The appellant who was already working on a lower post submitted her joining. The respondent challenged the selection on the ground that the appellant does not possess the requisite qualification. The respondent contended that as per the advertisement, the candidate was required to possess, besides Post Graduation in Psychology, Ph.D. or two years' M.Phil/Diploma in Medical and Social Psychology Course and also four years' teaching or research experience in Clinical Psychology. The appellant did not possess the two years' M.Phil qualification, and therefore she was not eligible for appointment. The contention found favour with the learned Single Judge, the selection was quashed by the impugned order.

It is not in dispute that the selection on the post in question is not governed by any recruitment rules. In fact, it is stated at the bar that till date the Government has not framed the rules for recruitment on the post. In that view of the matter, the controversy has to be resolved with reference to the qualification as mentioned in the advertisement. In the advertisement the qualifications/experience was mentioned as under :-

1. Post-graduation in Psychology from recognized University.

2. Ph.D. Or 2-year M.Phil/Diploma in Medical and Social Psychology or equivalent qualification.

3. Four years' teaching and/or research experience in Clinical Psychology.

It is not in dispute that the appellant was a Post Graduate in Psychology from a recognized University. There is also no dispute that she had four years' teaching experience in Clinical Psychology. According to the appellant she also possessed second requisite qualification, namely, M.Phil. of one year's duration. The case of the respondent has been accepted by the learned Single Judge that as per the advertisement, the qualification prescribed was two years' M.Phil which the appellant did not possess, and therefore she was not eligible for appointment. It was submitted on behalf of the appellant that the University of Rajasthan from which the appellant obtained the qualification is of one year's duration, and therefore the appellant held to be eligible for appointment. It was submitted that the appellant was found suitable by High Level Selection Board and she was found suitable for appointment by the experts, the learned Single Judge committed error in quashing the selection made by them.

It was also submitted that the State supported the case of the respondent before the learned Single Judge.

It is relevant to mention here that despite service of notice, the respondent chose not to appear and contest this appeal. We were informed that he has taken up some job elsewhere, and he is no more interested in pursuing the matter.

Be that as it may, the question for consideration is whether the order of the learned Single Judge quashing the selection of the respondent requires interference.

As indicated above, the appellant joined the post pursuant to her selection and order of appointment dated 17.11.1993, and though the learned Single Judge quashed her selection by virtue of an interim order passed in this appeal, she has continued on the post all along which means that the appellant had held the post for thirteen years. It was submitted on behalf of the appellant that on account of controversy surrounding her appointment, the department has neither released her annual grade increments nor allowed the benefit of pay revision. It was stated that she still being paid basic pay of Rs.3,000/- since her appointment, that is, thirteen years. The appointment, as mentioned at the outset, was intended to be temporary though it was stated in the advertisement that it was likely to be continued

in future.

We are of the view that having regard to the fact that the appellant has held the post for thirteen years and performed duties throughout without complaint, the benefit of the annual grade increments or pay revision should not be denied to her.

We do not wish to go into the larger question as to whether the appellant possessed the requisite qualification as mentioned in the advertisement or not. Since it is not the case of any of the parties that the appointment was made in relaxation of the qualification. We also do not intend to go into the question as to whether the qualification as mentioned in the advertisement could be relaxed. The appointment was intended to be temporary and likely to be continued in future, we are of the view that the interest of justice would be served by directing the respondents to allow the appellant the benefit of annual grade increment(s) and also pay revision as admissible to the appellant, and to pay the arrears during the intervening period and continue doing so till regular appointment is made on the post. The payment towards arrears as aforesaid, shall be made within two months of receipt of the copy of this order.

The appeal stands disposed of in the above terms.

[MOHAMMAD RAFIQ], J. [S.N. JHA], CJ.

Skant/-